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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/659,416	09/11/2000	Arto Astala	NC28244CIP	4624

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EXAMINER

NGUYEN, PHUOC H

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/659,416	ASTALA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Phuoc H. Nguyen	2143	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on January 18, 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 47-50 and 66-75 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 47-50 and 66-75 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>September 25, 2001</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

*[Handwritten signature]*

## **DETAILED ACTION**

### ***Response to Amendment***

1. This office action is in response to the amendment filed on January 18, 2005. Previous office action contained claims 47-50. Applicant amended claims 47-49, and added claims 66-75. Amendment filed on January 18, 2005 have been entered and made of record. Therefore, pending claims 47-50 and 66-75 are presented for further consideration and examination.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 47 and 49 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the

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reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 47-48, and 68-75 are rejected under 35 U.S.C. 102(e) as being anticipated by Moles et al. (Hereafter, Moles) U.S. Patent 6,615,038.

5. Regarding claims 47, 49, and 70-75, Moles discloses sending a configuration upgrade message from a source of an at least partial software upgrade (e.g. update controller (Figure 3, 305) received the upgrade file from the manufacturer, see Figure 3; col. 8 lines 49-52); saving upgrade information in a database associated with the source of the at least partial software upgrade (e.g. update controller store the upgrade files in the database, see Figure 3, 324; and col. 8 lines 52-54); identifying a plurality of users requiring at least partial software upgrade, and thereafter providing the at least partial software upgrade to respective servers associated with the plurality of users identified to require the at least partial software upgrade (e.g. reminder figure 2 is only a small portions of the wireless network of figure 1; Figures 3, col. 8 lines 54-57).

6. Regarding claim 48, Moles further discloses updating terminal equipment associated with a respective server with the at least partial software upgrade provided to the server (Abstract; col. 3 lines 3-28; and col. 8 lines 49-57).

7. Regarding claims 68 and 69, Moles further discloses identifying any servers to which product information is to be provided but to which product information has not yet been transferred, and determining, in response to activation of a terminal associated with a server, if the server has been identified as a server to which product information has not yet been transferred and, if so, providing product information to the server (Figure 2; col. 6 lines 28-44; and col. 6 last paragraph through col. 7 1<sup>st</sup> paragraph).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moles in view Kyle U.S. Patent 6,141,681.

Moles teaches server received the upgrade file from the manufacturer and upgrading the mobile devices based on the mobile station parameter; however, Moles fails to teach virus search is made to the end service product prior to conveying the product to the server.

Kyle teaches virus search is made to the end service product prior to conveying the product to the server (Figure 8; and col. 6 lines 8-17).

It would have been obvious to one of the ordinary skill in the art at the time of the invention was made to incorporate Kyle's teaching into Moles's method to provide virus search prior to receive the packet in order to protect the server from viruses and prevent it from transmitting itself across the network.

10. Claims 66 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moles in view Guarneri et al. (Hereafter, Guarneri) U.S. Patent 5,724,345.

Moles teaches server received the upgrade file from the manufacturer and upgrading the mobile devices based on the mobile station parameter; however, Moles fails to teach identifying any servers to which the at least partial software upgrade is to be provided but to which the at

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least partial software upgrade has not yet been transferred, and if so, providing the at least partial software upgrade to the server.

Guarneri teaches a method for determining whether the receiving station receives the data or software updates, if not, retransmits the packet.

It would have been obvious to one of the ordinary skill in the art at the time of the invention was made to incorporate Guarneri's method to Moles's invention to determine whether to packet is arrived, if not, retransmit the packet; as a result, it improves reliability of the system.

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Miller et al. U.S. Patent 6,192,410

McCaleb et al. U.S. Patent 6,751,794

Hoffman U.S. Patent 6,622,017

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuoc H. Nguyen whose telephone number is 571-272-3919.


The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Phuoc H Nguyen  
Examiner  
Art Unit 2143

April 22, 2005

  
**DAVID WILEY**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2100**

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